

UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEW HAMPSHIRE

Hypertherm, Inc.

v.

Civil No. 05-cv-373-JD

American Torch Tip Company

O R D E R

American Torch Tip Company ("ATTC") moves for leave to file a reply to Hypertherm, Inc.'s objection to ATTC's motion to reconsider the court's order issued on July 24, 2008. In the July 24 order, the court granted partial summary judgment in Hypertherm's favor on ATTC's invalidity defenses as to two patents and on infringement by prior versions of accused products. ATTC moved for reconsideration of summary judgment on infringement by prior versions and asks the court to preserve certain invalidity defenses. Hypertherm filed an objection to ATTC's motion for reconsideration, arguing that ATTC failed to satisfy the standard for reconsideration, pointing out the corrected list of prior versions of accused parts, and contending that no clarification to preserve defenses was necessary.

In support of its motion for leave to file a reply, ATTC charges that Hypertherm has raised new factual assertions and

legal arguments in its objection to ATTC's motion for reconsideration. ATTC does not identify, however, what new facts and theories are presented. Hypertherm objects to ATTC's motion for leave to file a reply on the ground that additional briefing on the issues is not necessary and that the proposed reply includes factual and legal errors. Hypertherm asserts that if leave were granted to file the reply, it would seek leave to file a surreply.

ATTC is granted leave to file the reply, although granting leave does not suggest that the court will consider any argument or evidence presented in the reply or in the motion for reconsideration that is beyond the scope of a motion for reconsideration. Hypertherm is granted leave to file a surreply.

#### Conclusion

For the foregoing reasons, the defendant's motion for leave to file a reply (document no. 309) is granted. The plaintiff is

granted leave to file a surreply within ten days of the date of this order.

SO ORDERED.

  
Joseph A. DiClerico, Jr.  
United States District Judge

October 16, 2008

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